IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JUDITH A. YOUNG, Respondent, v. JAMES M. YOUNG and SHANNON YOUNG, husband and wife, Appellants, STATE OF WASHINGTON, DEPARTMENT OF LABOR and INDUSTRIES, [1] Defendant.	No. 33248-5-II UNPUBLISHED OPINION

VAN DEREN , A.C.J. – Jim and Shannon Young appeal the trial court's damages award that it based on what it actually cost Jim and Shannon to improve Judith Young's property.[2] Jim and Shannon lived on and made substantial improvements to Judith's property from 1998 until December 2002, when she insisted that they move off the property. The trial court concluded

[1] State of Washington, Department of Labor and Industries, was a named party at trial but is not a party on appeal.

[2] To avoid confusion, we refer to the parties by their first names. Throughout the briefs, James is referred to as Jim, and we therefore adopt the parties' designation. We mean no disrespect.

that Jim's and Shannon's work substantially enhanced the value of Judith's property and that it was unjust for Judith to retain the value of that work without compensating Jim and Shannon. Jim and Shannon argue that (1) the proper measure of damages for unjust enrichment is the greater of (a) what it would have cost Judith had she hired a third party contractor to perform the work or (b) the enhanced value of the property resulting from the work; and (2) thus, the trial court erred when it awarded damages based on Jim's and Shannon's actual cost to improve the property. We reverse and remand for an award of damages to Jim and Shannon based on the cost of improvements had a third party performed the work.

FACTS

Judith is an independently wealthy aunt of Jim.[3] Judith resides in Georgia on a 200-acre property where she runs an otter conservation facility and maintains several other animals. Jim is married to Shannon and is a licensed and bonded contractor in Washington engaged in the businesses of timber cutting, clearing, grading, dozing, and concrete slab construction.

Judith developed a close relationship with Jim and Shannon in 1993. In 1997, Judith discussed the possibility of moving to Washington.[4] In 1998, Jim discovered a 186-acre property in Thurston County when he was asked to hay the property. Its owner had listed the property for sale. Although the property was in poor condition and had not been properly maintained for ten

[3] Jim and Shannon do not challenge any of the trial court's findings of fact making them verities on appeal. *Ducolon Mechanical, Inc. v. Shinstine/Forness, Inc., et al*, 77 Wn. App. 707, 714, 893 P.2d 1127 (1995).

[4] Judith did not like her neighbors, did not like living in Georgia, and wanted to move her otter conservation center to a property with natural springs because well water gave her otters gall stones.

years,[5] Jim and Shannon felt that the property had characteristics Judith might find desirable. It was about the same size as Judith's Georgia property, there were natural springs located on the property, and although run-down, there were also a ranch house and several outbuildings and facilities.

Jim and Shannon told Judith about the property, sent numerous pictures, and fully described its characteristics, including both its current run-down condition and its potential for development. Judith decided to purchase the property and instructed Jim to submit an offer on the property. He did so in June 1998. After Judith, Jim, and Shannon discussed plans for improving the property, Judith asked them, and they agreed to undertake, work necessary to "fix up" the property for Judith. Clerks Papers (CP) at 622. Judith told Jim and Shannon that after she moved to the property, they should continue to live nearby, continuing to assist her in improving and maintaining the property and operating her otter center.

After Jim had submitted an offer to purchase the property on Judith's behalf, but before the sale closed, he visited Judith in Georgia to work on her property there. During that visit, Jim and Judith discussed how Judith would pay Jim and Shannon for both the work he conducted on her Georgia property and the work he and Shannon would complete on her new property in Thurston County. These discussions resulted in Jim's reasonable, good faith belief that Judith

[5] The ranch house located on the property was in poor condition--the roof leaked, causing significant interior water damage, and most of the appliances and toilets did not work. The outbuildings and facilities located on the property were in substantial need of repair. The land itself was in run-down condition--the fields were full of rocks and stumps; the property's sporadic fencing was in poor repair; the property's roads had not been maintained; and there was substantial debris in the outbuildings and scattered throughout the property.

would purchase property for Jim and Shannon near Judith's Thurston County property once she relocated her otters to Washington.

The purchase of Judith's Thurston County property closed in late July or early August 1998, and with Judith's knowledge and consent, Jim's and Judith's names were placed on the property's title. Jim's name was included on the title in the good faith belief that its inclusion would facilitate the acquisition of necessary permits and approvals to construct otter pens and other improvements on the property. Moreover, Judith agreed that Jim, Shannon, and their family should move onto the property to facilitate its improvement.

Jim and Shannon regularly discussed with and informed Judith of the work they were performing on the property; before Jim and Shannon filed their complaint in this matter, Judith never objected to the work they were doing on the property. All work Jim and Shannon performed on the property was of good and workmanlike quality or better, and was of at least the quality or better than what Judith could have obtained had she hired a contractor to perform similar work.

Jim and Shannon performed or supervised all the work themselves. Jim and Shannon either owned or obtained the heavy equipment, machinery, and tools that were used to improve the property. And between 1998 and 2000 (the period when Jim and Shannon made the vast majority of improvements), Jim and Shannon paid all expenses associated with the improvement and upkeep of the property.

In 2000, Judith decided that she did not want to move to the Thurston County property. But she did not communicate her decision to Jim and Shannon, who continued to improve the

property. Despite her decision, Judith never suggested or directed Jim and Shannon to cease working on the property. By April 2001, Jim and Shannon began to suspect that Judith would not move to Thurston County and discussed with Judith the possibility of converting the property into a working cattle ranch. After discussing the proposal for about two months, Judith, Jim, and Shannon all formed the good faith belief that they had reached an agreement. Although Jim and Shannon reasonably and in good faith understood the existence of certain terms in the agreement, Judith's understanding of the terms differed substantially. The parties began carrying out their oral agreement according to their respective understandings of its terms.

In August 2002, Judith retained counsel in Seattle and sent a letter to Jim and Shannon expressing her wish to remove Jim from the property title. Jim and Shannon responded that the parties had entered into the cattle ranch agreement and described its terms as they understood it. In May 2003, Judith sued Jim and Shannon, asking the court to quiet title in her name, to eject Jim and Shannon from the property, and to find Jim and Shannon liable for converting her property. Judith also sought an award of damages.

One month later, Jim and Shannon answered and filed a counterclaim, advancing an unjust enrichment theory for the improvements they had made to Judith's property. The court dismissed Judith's claim for conversion and damages but heard all remaining claims at a bench trial held in March 2005.

Michael Summers, a professional cost engineer, testified on behalf of Jim and Shannon. He estimated that Jim's and Shannon's work would have cost Judith $760,382 in year-2000 dollars had she hired a third party contractor. The trial court specifically found Summers'

testimony, opinions, and cost estimate accurate and credible.

Jim and Shannon also presented the testimony of Jan Henry, a real estate agent with 30 years' experience. Henry testified that the purchase price of $1,050,000 accurately reflected the Thurston County property's fair market value in 1998 when Judith purchased it, and that the property's value at the time of trial had increased to between $2,200,000 and $2,500,000. It was Henry's expert opinion that $300,000 to $400,000 of the increase was due to the property's natural appreciation in the absence of any improvement. The trial court specifically found Henry's testimony to be accurate and credible.

Gene Weaver, a real estate agent, testified for Judith. It was his opinion that the property's fair market value at the time of trial was $1,150,000. The trial court specifically rejected Weaver's testimony, finding it inaccurate, not credible, and unreliable.

The trial court determined that Judith asked Jim and Shannon to perform work on the Thurston County property, that she was at all times aware of the work Jim and Shannon were doing, and that Jim's and Shannon's work substantially enhanced the property's value. The trial court additionally found that "[i]t would be unjust for Judith Young to retain the value by which the work performed by Jim and Shannon Young has enhanced the Thurston County property without paying Jim and Shannon Young therefore." CP at 638.

The court stated that in an unjust enrichment case "the appropriate measure of damages is generally the greater of: (1) the cost the owner would incur for the property owner to obtain the same services from a third party; and (2) the amount by which the services provided have increased the value of the property." CP at 639. But it declined to adopt that measure "under the

particular circumstances of this case." CP at 639. The trial court explained that Summers' cost estimate included a number of costs a general contractor would have incurred that Jim and Shannon did not, and therefore, Summers' $760,382 estimate should be reduced to $501,866. It therefore limited its damages award to $501,866.

Jim and Shannon appeal, arguing that the trial court applied the wrong measure of damages.

ANALYSIS

Measure of Damages

A. Standard of Review

The fact finder determines the amount of damages. *Mason v. Mortgage Am., Inc.*, 114 Wn.2d 842, 850, 792 P.2d 142 (1990). Accordingly, we will not overturn a damage verdict unless it is not supported by substantial evidence, shocks the conscience, or resulted from passion or prejudice. *Mason*, 114 Wn.2d at 850. Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person that a finding is true. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). We review conclusions of law de novo. *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

B. The Trial Court's Award of Damages

Jim and Shannon argue that the trial court stated the correct measure of damages but then improperly declined to apply it. Rather than awarding Jim and Shannon the greater of (1) the cost Judith would have incurred had she obtained the same services from a third party or (2) the amount their services increased the value of the property, the trial court incorrectly awarded only

the costs Jim and Shannon incurred in improving the Thurston County property.

Judith responds that the trial court had broad discretion to determine the "reasonable value" of Jim's and Shannon's services and that "reasonable value" is not synonymous with

"market value."[6] Br. of Resp't. at 10, 11.

Unjust enrichment occurs when one retains money or benefits that in justice and equity belong to another. *Bailie Commc'ns v. Trend Bus. Sys. Inc.*, 61 Wn. App. 151, 160, 810 P.2d 12 (1991). An unjust enrichment claimant must establish that (1) he conferred a benefit on the defendant; (2) the defendant appreciated or knew of the benefit; and (3) the defendant's acceptance or retention of the benefit under the circumstances make it inequitable for the defendant to retain the benefit without paying its value. *Bailie*, 61 Wn. App. at 159-60 (citing Black's Law Dictionary 1535-36 (6th ed. 1990)).

The proper measure of recovery in an unjust enrichment claim is the reasonable value of the claimant's improvements to the defendant's property. *Noel v. Cole*, 98 Wn.2d 375, 382, 655 P.2d 245 (1982). Where the party seeking recovery is not at fault, reasonable value is measured by the amount the benefit would have cost the defendant had she obtained the benefit from some other party in the claimant's position. *Noel*, 98 Wn.2d at 383.

Judith emphasizes that the principles of *quantum meruit* govern the measure of recovery in

[6] Judith also argues that Jim and Shannon failed to preserve the trial court's alleged error for appeal because they did not raise the issue at trial. Judith is incorrect. Jim and Shannon argued at trial and in their trial brief that the proper measure of damages was the greater of (1) the cost Judith would have incurred had she obtained the same services from a third party; or (2) the amount the services provided increased the value of the property. Further, the trial court did not rule on the measure of damages until after trial when it issued its oral decision on March 30, 2005. Thus, Jim and Shannon did not have an opportunity to object to the court's chosen measure of damages until after trial.

Judith also argues that substantial evidence supports the trial court's damages award. But whether the trial court applied the correct measure of damages--the issue Jim and Shannon raise on appeal--is a question of law we review de novo. Before we determine whether substantial evidence supports the trial court's award--a factual issue--we must determine whether the trial court applied the correct legal standard.

this case. Judith's concern is inconsequential because the measure of recovery under *quantum meruit* appears to be the same as that outlined in *Noel*, 98 Wn.2d at 382-83. A party relying on *quantum meruit* generally recovers the reasonable value of the services rendered or benefit conferred. *Bort v. Parker*, 110 Wn. App. 561, 580-81, 42 P.3d 980 (2002); *Ducolon Mech. Inc.*, 77 Wn. App. at 711 n.1, 712-13; *Bailie*, 61 Wn. App. at 159.

Here, the trial court recited that damages are the greater of the cost to have the services rendered by a third party or the increase in value resulting from the improvements, but then it improperly declined to award either measure. The trial court adopted Jim's and Shannon's contention that the measure of damages was the greater of (1) the cost Judith would have incurred had she obtained the same services from a third party or (2) the amount the services provided increased the value of the property. Although Washington courts have held that the measure of damages in similar cases is the cost the defendant would have incurred had she obtained the same services from a third party, they have not held that the measure is the greater of the two factors stated. Thus, the trial court was only partially correct in adopting Jim's and Shannon's measure of recovery.

Summers estimated that the improvements Jim and Shannon made to the Thurston County property would have cost Judith $760,382 in year-2000 dollars had she hired a third party to do the work. The trial court specifically found this cost estimate accurate and credible. Thus, the reasonable value of Jim's and Shannon's work was $760,382. *See Noel*, 98 Wn.2d at 383. But the court erroneously awarded Jim and Shannon only $501,866, reducing Summers' cost estimate by costs the trial court concluded a general contractor would have incurred that Jim and Shannon

did not.

Whether Jim and Shannon incurred costs a general contractor would have incurred is irrelevant when assessing "reasonable value" under the *Noel* standard. *See* 98 Wn.2d at 383.

"Reasonable value" is distinct from cost and a court should generally not limit maximum recovery to cost. *Noel*, 98 Wn.2d at 383 n.6. But where, as here, the party seeking recovery is not at fault, "reasonable value" is the cost Judith would have incurred had she hired a third party contractor. *Noel*, 98 Wn.2d at 383. Here, that cost was $760,382. The trial court did not award Jim and Shannon the reasonable value of their work, but rather, it incorrectly awarded only what it actually cost them to do the work.

We reverse and remand for an award of damages to Jim and Shannon based on what it would have cost Judith to have a third party make the improvements. Here, that cost is $760,382.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, A.C.J.

We concur:

Bridgewater, J.

Hunt, J.